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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James W. Wieder

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EXAMINER

GREENE, DANIEL LAWSON

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,879	Applicant(s) WIEDER, JAMES W.	
	Examiner DANIEL L. GREENE	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 163-231 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 163-231 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/21/09</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 163-179 and 206-231 are pending. Applicant's response received 1/26/2009 containing amended claims and arguments against the contentions set forth in the previous Non-Final Office action mailed 10/1/2008 has been considered and entered. Accordingly, an action on the merits of claims 163-179 and 206-231 follows.

Admission of Prior Art under MPEP § 2144.03 [R-1] C

2. During the interview on 11/19/2008 applicant acquiesced to the admission set forth in section 3 of said previous Office action. No traversal was submitted in the response received 1/26/2009. Accordingly, said admission is considered final.

Information Disclosure Statement (IDS)

3. The IDS received 1/21/2009 has been considered and is attached to the instant Office action.

Response to Arguments

4. Applicant's arguments filed 1/26/2009, with regard to the 35 USC 101 rejection set forth in section 6 of said previous Office action have been fully considered and are persuasive, accordingly said rejection is hereby withdrawn.

5. Applicant's arguments filed 1/26/2009, with regard to the 35 USC 103 rejections set forth in sections 9-11 of said previous Office action have been fully considered and are persuasive, accordingly said rejections are hereby withdrawn.

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6. Applicant's arguments filed 1/26/2009, with regard to the 35 USC 102 rejection set forth in section 8 (Conkwright) of said previous Office action have been fully considered but they are not persuasive. Accordingly said rejection is sustained and incorporated herein by reference as expounded upon below.

Applicant argues on page 12 of 34:

“The applicant has thoroughly studied Conkwright and can find no disclosure, hint or suggestion that Conkwright tries to determine a user's rating that indicates the amount of preference of a user for a particular piece or composition.”

Response:

Conkwright clearly teaches that “event data” is collected by the set-top box. Event data is set forth in, for example, Col. 3, lines 50-60, Col. 4, lines 15-33, Col. 6, lines 47-64, Col. 9, lines 29-44, etc. Event data is collected for each “event” at the set-top box. Accordingly, every time a particular piece or composition is selected, the event data for that particular piece or composition is collected by said box. It is understood that the actual selection of the particular piece or composition is an indication of the amount of preference of a user for that piece because it was selected over all other pieces. Further, each time a piece is selected the event data is captured, so selecting it again will also be recorded. Accordingly, the more a piece is selected clearly indicates the users “rating” of the piece. Figures 19 and 20 clearly teach collection and analization of the event data to arrive at a model of an individual. Figure 20 clearly teaches creating a table of user “interests”. The word “interests” is considered synonymous with

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applicant's "preferences". Again, it is considered that the act of selecting a program can be considered the preference and the number of times the program is selected can be considered the rating.

Applicant argues on page 13 of 34:

"Conkwright and these other prior art approaches assume that all users in a group have the same tastes. But there are only a limited number of groups. Yet each user has unique tastes. An individual may not like everything that a group is suppose to like. And, the user may like other things that are outside a defined group. Conkwright selects content that is targeted for the group(s) a user is in, but this content will not always be what an individual user likes.

Another problem with Conkwright is the use mathematical probabilities to determine the group(s) a user is in. With Conkwright, a user may be determined to be in the wrong group(s) and then that user will receive an even larger amount of content that the user does not like.

Another problem with Conkwright is that the type of content that is selected for the user will only change, if new set-top-box events were to cause the user to be determined to be in different group(s) than previously. For example, it may take a number of different set-top box events to cause a user to be removed from the "wrong" group(s) and to cause the user to be placed into the "right" group(s). Hence, Conkwright can only "coarsely" change the type of content that is selected for a user and only by determining that a user should be in a different group(s)."

Response:

It appears applicant fails to appreciate en toto the invention set forth in Conkwright. The teachings of Conkwright are not only applicable to a group of individuals but to individuals themselves. That is, Conkwright claim 1 can be read with the understanding that there is ONLY ONE set top box in the region and only one user. Hence only one model will be present and content will be selected and played base on that one user's preferences. That is, although Conkwright may teach what applicant states, Conkwright also teaches selecting content for not only a group of people, but also for just one person.

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7. Applicant's arguments filed 1/26/2009, with regard to the 35 USC 103 rejection set forth in section 12 (Conkwright ivo Cohen or Fanning) of said previous Office action have been fully considered but they are not persuasive. Accordingly said rejection is sustained and incorporated herein by reference as expounded upon below.

Applicant argues:

“But Fanning does not disclose that when a user selects a "smart playlist" for playback, that the frequency that a song (in the "smart playlist") is played is influenced by the "My ratings"; play count; last played; etc. Hence, the Office has not shown where this specific feature/limitation is located in the cited art. Even if the specific elements could be found in Fanning and Cohen, applicant respectfully traverses the rational for combining these references for at least the following reasons.

Even if one was able to combine Fanning and Cohen (play count; last played) to Conkwright; that combination of references would only, per Conkwright, be using additional set-top-box events to determine which group(s) a user is in. But, this combination of references would still not determine a user's rating "wherein a said user's rating represents an amount of preference of the user for a said piece or composition". Hence, combining these references does not result in the applicant's claimed invention and a 103 rejection is not proper.”

Response:

The alleged deficiencies of Conkwright have already been addressed.

Accordingly, the remaining alleged deficiency appears to be “...the frequency that a song (in the "smart playlist") is played is influenced by the "My ratings"; play count; last played; etc.”

The entire purpose of even creating a “rating” is to affect the playback of the material that is rated. See the specification as filed, paragraphs [0014], [0016], etc. Accordingly, the higher an individual rates a composition, the more likely it is to be played sooner than a composition with a lower rating.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

8. Claims 163-179 and 206-231 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 7,146,329 B2 to Conkwright et al. (Conkwright) (Published as US 2002/0133490A1 on 9/19/2002) for the reasons set forth in section 8 of the previous Office action mailed 10/1/2008 which in turn refers back to section 12 of the previous Office action mailed 4/9/2008 as well as those set forth above and immediately hereafter.

See the discussion of this topic in section 6 above.

Again, a users “rating” can be understood to be nothing more than the amount of time a user watches a selected program. The more it is watched the higher the rating.

Claims 206 and 207 are disclosed in Conkwright because the event data is stored and the “rating” can be derived from this event data. That is, the more a first program is selected the higher “rating” it has for said program for that user, while the converse is also true, i.e. the less a program is selected, or the more some OTHER program is selected, the lower the rating for the first said program.

Regarding claims 208-210, Conkwright clearly discloses adjusting the preferences based on newer user control action because "event data" is constantly being monitored and updated in the order in which it is applied to the experienced content. Further, with regard to the “amount” the rating is adjusted, one must appreciate that the amount of time a user spends experiencing a composition is indicative of their rating.

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That is, if a user spends 80% of the time watching one composition then it has a higher rating because more time was spent watching that program vice any other program.

Regarding claim 211-219, Conkwright clearly discloses that “event data” will be saved every time an event occurs.

Claims 220, 224 and 228 are rejected for the same reasons as claim 163 wherein it is understood that the event data will be stored each time the piece is selected.

Claims 221, 225 and 229 are rejected for the same reasons as claim 163 wherein it is understood that the event data will be stored each time the piece is selected.

Claims 222, 226 and 230 are rejected for the same reasons as claim 163 wherein it is understood that the event data will be stored each time the piece is selected.

Claims 223, 227 and 231 are rejected for the same reasons as claim 172.

Claim Rejections - 35 USC § 103

9. Claims 163-179 and 206-231 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conkwright as applied to claims 163-179 and 206-231 above, and further in view of either Cohen or Fanning for the reasons set forth in section 12 of the previous office action mailed 10/1/2008 as expounded upon above.

See the discussion of this topic in section 6 above.

10. Claims 163-179 and 206-231 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,941,324 to Plastina et al. (Plastina).

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Regarding claims 163, 220, 224 and 228, Plastina clearly discloses a computer readable medium embodying and an apparatus performing a machine-implemented method for personalized music or entertainment, the method comprising:

- capturing, at a user-device, details of control actions by a user on pieces or compositions; wherein said control actions are user actions that:
 - affect the current playback of a piece or composition, or
 - find or select a piece or composition, or
 - designate a piece or composition for playback;
- storing in one or more memories, a user's rating for each piece or composition in a plurality of pieces or compositions; wherein a said user's rating represents an amount of preference of the user for a said piece or composition; wherein a said user's rating was determined by using said details of previous said control actions by said user;
- playing automatically, at least one piece or composition; wherein the piece or composition is custom selected for said user by using said user's ratings, in, for example, the Abstract, Figures, 2, 3, 5, 11, 13 (and associated descriptive text), Col. 2, lines 2-4, Col. 3, lines 23-44, Col. 6, line 52 through Col. 8, line 67, etc.

Plastina does not appear to specifically disclose that the control actions are user actions that affect the playback of a piece or composition in the same manner as applicant. Plastina does however set forth in, for example, Col. 8, lines 1-65, a multitude of parameters that are monitored as well as the telling statement "The examples given below are intended as examples only and should not be construed to limit the parameters or types of parameters that can be utilized."

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At the time of the invention it would have been obvious to one of ordinary skill in the art to apply the teachings of Plastina with regard to the user parameters that are monitored and have modified Plastina to include parameters that affect the playback, search, selection, or designation of a piece or composition. One would have been motivated to make such a modification for the benefits of more accurately monitoring user habits for the benefit of selecting compositions to be played for the user that are more in tune with the users preferences..

Regarding claims 164-179, 206-219, 221-223, 225-227 and 229-231, each of these claims sets forth a variation of the manner in which the rating is determined. Each of these limitations are considered obvious variants of collecting user "preferences" and as such would have been obvious to one of ordinary skill in the art at the time the invention was made because Plastina is concerned with providing a highly customized and enjoyable "smart" playlist.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. G./
Examiner, Art Unit 3694
2009-04-13

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694